IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

LA.App..No. 756 of 2001(D)

LAR.39/1999 of SUB COURT, TIRUR
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APPELLANT: RESPONDENT

STATE OF KERALA

BY GOVERNMENT PLEADER SRI K.V.MANOJ
SRI.V.K.BEERAN, ADDL.ADVOCATE GENERAL

RESPONDENTS: PETITIONERS
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1. KARATTIL AYISHUMMA, W/O. KAINIKKARA SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

2. KAINIKKARA ZAINABA, D/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

3. KAINIKKARA AYISHABEEVI, D/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

4. KAINIKKARA SHARAFUDHEEN, S/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

5. KAINIKKARA SAFIYA, D/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

6. KAINIKKARA MOHAMMED IQBAL, S/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

7. KAINIKKARA ABDURAHIMAN, S/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

8. KAINIKKARA ABDUSAMAD, S/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

9. KAINIKKARA MOHAMMED BASHEER, S/O. SAIDALIKUTTY, KAINIKKARA HOUSE, MUTHUR, TIRUR.

10. KAINIKKARA MUSTHAFAM S/O. SAIDALIKUTTY,
KAINIKKARA HOUSE, MUTHUR, TIRUR.

11. KAINIKKARA VAHABUDHEEN, S/O. SAIDALIKUTTY,
KAINIKKARA HOUSE, MUTHUR, TIRUR.

12. DEPUTY CHIEF ENGINEER, CONSTRUCTION, SOUTHERN RAILWAY,
CALICUT.

R1 TO 11 BY ADV. SRI.T.KRISHNAN UNNI
R12 BY SRI. K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

LAA 756 OF 2001

I.A. 749 OF 2003

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DISMISSED

26.9.2007 KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.756 of 2001-D

Dated: September 26, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This appeal is filed by the State against the judgment and decree dated 31.1.2001 in LAR No.39/1999 on the file of the Sub Court, Tirur. The extent of land acquired is 0.0251 hectare (6.20 cents) of garden land comprised in R.S.No.326/21 in Thrikkandiyur village of Tirur Taluk for doubling of Tirur-Tirunavaya railway line. The notification under S.4(1) was finally published on 10.2.1997.

2. The claimants, in support of their claim for enhancement of compensation, examined PWs.1 and 2 and Exts.A1 and A2 were marked on their side. RW.1 was examined on the side of the respondent and Ext.B1 marked. Exts.C1 and C2 - commissioner's report and plan - were also marked.

3. The court below, after considering the evidence on record, entered the finding that the acquired land and the basis land are not similar and similarly situated, that the market value of lands similar to the acquired land in the locality prevailing at the time of S.4(1) notification was between Rs.25,000/- and Rs.30,000/- per cent and that the facts proved will reveal that the acquired land is more valuable than the basis land. In the circumstances the court below fixed the land value for the acquired land at the rate of Rs.15000/- per cent.

4. The claimant is aggrieved by the fixation of value for the residential building situated in the property. The land acquisition officer fixed the value of the structure at Rs.99,678/-. According to the claimant, the value fixed by the land acquisition officer is too meagre and does not reflect the market value of the building. Therefore, he had taken out a commission to assess the value of the building. The commissioner assessed the value of the building at Rs.3,16,800/- after deducting 25% towards depreciation. The commissioner assessed the value of the building with the assistance of an expert, who is a retired Executive Engineer (Civil), appointed by the trial court. The court below found that the valuation report prepared by the Railway based on the prevailing rates approved by the local PWD, was not produced before the court by the respondent, nor the Engineer of the Railway who made the valuation nor the PWD Engineer was examined in support of the valuation fixed by the land acquisition officer. In the circumstances the court below held that the value of the building awarded by the land acquisition officer is not acceptable. The court below entered the finding that Rs.99,678/- awarded by the land acquisition officer is too meagre in view of the assessment made by the commissioner appointed by the court. So, the trial court held that justice demands that an amount of Rs.2 lakhs has to be awarded to the building.

5. In the appeal the learned Government Pleader, though

contended that the land value fixed by the court below is on the higher side, we are of the view that the value fixed for the land at the rate of Rs.15000/- per cent is reasonable taking into account the oral and documentary evidence available on record.

6. Coming to the question of valuation of the building also we find that though the commissioner valued the building at Rs.3,16,800/-, the court below reasonably fixed it at Rs.2 lakhs which also, according to us, is fair and reasonable.

We find no merit in the appeal filed by the State. Accordingly this appeal stands dismissed.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. No.756 of 2001-D

JUDGMENT

26.9.2007